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SEC

SERVICE DATE - LATE RELEASE DECEMBER 20, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33995

SF&L RAILWAY, INC.—ACQUISITION AND OPERATION EXEMPTION—TOLEDO,
PEORIA AND WESTERN RAILWAY CORPORATION BETWEEN LA HARPE AND PEORIA,
IL

STB Finance Docket No. 33996

KERN W. SCHUMACHER AND MORRIS H. KULMER—CONTINUANCE IN CONTROL
EXEMPTION—SF&L RAILWAY, INC.

STB Docket No. AB-448 (Sub-No. 2X)¹

SF&L RAILWAY, INC.—ABANDONMENT EXEMPTION—IN HANCOCK, MCDONOUGH,
FULTON AND PEORIA COUNTIES, IL

Decided: December 20, 2002

SF&L Railway, Inc. (SF&L), acquired the operating easement over, and the rail, ties, and certain improvements on, a 71.5-mile rail line between milepost 194.5 at La Harpe and milepost 123.0 at Peoria, IL (La Harpe Line or Line) from Toledo, Peoria and Western Railway Corporation (TP&W), under a class exemption invoked in STB Finance Docket No. 33995 (served and published at 66 FR 9411 on Feb. 7, 2001).² Petitions to revoke this exemption and the related exemption in STB Finance Docket No. 33996 for Messrs. Kern W. Schumacher and Morris H. Kulmer to continue

¹ These proceedings are not consolidated; they are being considered together for administrative convenience.

² TP&W, a Class III railroad controlled by RailAmerica, Inc. (RailAmerica), a noncarrier holding company, retained the underlying real estate, subject to what it described as a permanent, unconditional easement permitting SF&L to fulfill the common carrier obligation for the Line. SF&L did not commence operations until December 2001. TP&W continued to operate the Line for its own account until then.

in control of SF&L after it became a rail carrier³ were filed by the Keokuk Junction Railway Co. (KJRY), and by the United Transportation Union-Illinois Legislative Board both on its own and jointly with McDonough County and the city of Macomb.

On September 3, 2002, SF&L filed a petition for exemption in STB Docket No. AB-448 (Sub-No. 2X) to abandon the La Harpe Line⁴ claiming that there is not enough traffic to justify the Line's continued operation and maintenance and that adequate transportation alternatives are available. Subsequently, in a decision served in STB Finance Docket Nos. 33995 and 33996 on October 17, 2002 (SF&L-La Harpe), the Board revoked the acquisition and the continuance in control exemptions, ordered SF&L to reconvey its interest in the La Harpe Line to TP&W, and stated that a decision would soon be issued dismissing as moot SF&L's petition for exemption in this proceeding.

In anticipation of the reconveyance, TP&W on October 30, 2002, filed a motion to substitute itself for SF&L in this petition for exemption. SF&L filed a letter in support on November 19, 2002. Additionally, a notice of exemption was filed on November 20, 2002, for TP&W to transfer SF&L's reconveyed interest in the La Harpe Line to Western Illinois Railway Company (WIRC), a noncarrier controlled by RailAmerica through another noncarrier subsidiary, Palm Beach Rail Holdings, Inc. (PBRH). See Western Illinois Railway Company Acquisition Exemption—Toledo, Peoria and Western Railway Corporation, STB Finance Docket No. 34282 (STB served and published at 67 FR 78040 on December 20, 2002).

On December 13, 2002, SF&L and Messrs. Kern W. Schumacher and Morris H. Kulmer (collectively, Petitioners), jointly filed a petition to reconsider the SF&L-La Harpe decision. Petitioners had filed for reconsideration on November 13, 2002, but withdrew that petition on November 15, 2002, allegedly in response to TP&W's assurance that it had obtained an extension of the effective date of the SF&L-La Harpe decision and that it desired to negotiate a monetary settlement to comply with the Board's reconveyance order. Petitioners state that they filed the new petition for reconsideration because the negotiations have been slow and might not be successful.

Under the circumstances, it would be premature for the Board to dismiss as moot SF&L's petition for exemption, or to rule on TP&W's motion to substitute itself for SF&L, in the abandonment

³ Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Railway, Inc., STB Finance Docket No. 33996 (served and published at 66 FR 9410 on Feb. 7, 2001).

⁴ SF&L filed a draft Federal Register notice on September 10, 2002, and amendments to the petition for exemption on September 17 and 19, 2002. Notice of the petition for exemption was served and published in the Federal Register at 67 FR 59596 on September 23, 2002.

proceeding while the Board is considering SF&L's petition to reconsider the SF&L-La Harpe decision. Accordingly, actions in the abandonment proceeding will be deferred for 30 days from the service date of this decision to permit the Board to address SF&L's petition to reconsider the SF&L-La Harpe decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Action in STB Docket No. AB-448 (Sub-No. 2X) will be deferred until January 21, 2003, to permit the Board to address SF&L's petition to reconsider the SF&L-La Harpe decision.

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary